

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD R. ONDRAK,

Defendant.

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CASE NO. 4:13CR3090

**MEMORANDUM
AND ORDER**

The Court has received the Revised Modified Presentence Investigation Report and Addendum ("PSR"), and the Defendant's Statement of Objection to Presentence Report (Filing No. 18). The government filed a Statement of Position (Filing No. 21.) and the Defendant filed a response to the government's statement (Filing No. 23). The Defendant has also filed a Motion for Downward Departure or Variance with accompanying brief (Filing Nos. 19 and 20). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Accordingly,

IT IS ORDERED:

1. The parties' statements and objections, and the defendant's response to the government's statement regarding the PSR (Filing Nos. 18, 21, and 23) will be heard at the sentencing hearing;
2. The Court intends to adopt the PSR in all other respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, these tentative findings are final;

5. The Defendant's Motion for Downward Departure or Variance (Filing No. 19) will be heard at sentencing; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 21st day of October, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge